

ESTTA Tracking number: **ESTTA673392**

Filing date: **05/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Abita Brewing Company, LLC
Granted to Date of previous extension	05/20/2015
Address	P. O. Box 1510 Abita Springs, LA 70420 UNITED STATES
Attorney information	Raymond G. Areaux (#33,643) Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC 1100 Poydras Street, Suite 3100 New Orleans, LA 70163 UNITED STATES areaux@carverdarden.com Phone:(504) 585-3803

### Applicant Information

Application No	86416478	Publication date	01/20/2015
Opposition Filing Date	05/20/2015	Opposition Period Ends	05/20/2015
Applicant	THE FLORIDA BREWERY INC. 202 Gandy Road Auburndale, FL 33823 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Beer, ale and lager

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2213433	Application Date	05/01/1997
Registration Date	12/22/1998	Foreign Priority Date	NONE
Word Mark	ANDYGATOR		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: First Use: 1995/02/10 First Use In Commerce: 1998/08/11 beer, ale, lager, malt liquor
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Attachments	Notice of Opposition-19934.pdf(30343 bytes ) Exhibit A.pdf(560645 bytes ) Exhibit B.pdf(278563 bytes ) Exhibit C.pdf(356523 bytes ) Exhibit D.pdf(257696 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Theodore S. Owers III/
Name	Raymond G. Areaux (#33,643)
Date	05/20/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**Abita Brewing Company, LLC**  
*Opposer*

v.

**The Florida Brewery, Inc.**  
*Applicant*

\* Opposition No.: *to be assigned*

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\* Serial No. 86/416,478

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\* Proposed Design:

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**NOTICE OF OPPOSITION**

Abita Brewing Company, LLC, a limited liability company organized under the laws of Louisiana, whose address is Post Office Box 1510, Abita Springs, Louisiana, 70420, believes that it will be damaged by the grant of a registration to The Florida Brewery, Inc. for the proposed design as set forth in Application Serial No. 86/416,478 and hereby opposes the same.

As grounds for opposition, Opposer alleges as follows:

1. Applicant seeks to register the design shown above (the “Gator Lager Design”) in International Class 032 for goods identified as “Beer, ale and lager,” as evidenced by the filing of trademark application Serial No. 86/416,478 (“the ‘478 Application”) on October 7, 2014 and the publication for opposition of the ‘478 Application on January 20, 2015. As is readily apparent from the image displayed above, the literal element GATOR is a prominent feature of the Gator Lager Design.

2. Opposer is the owner of U.S. Registration No. 2,213,433 of the trademark ANDYGATOR for “beer, ale, lager, malt liquor” issued on December 22, 1998 (“the ‘433 Registration”). The ‘433 Registration claims a date of first use at least as early as February 10,

1995 and a date of first use in commerce at least as early as August 11, 1998. The ‘433 Registration was renewed in 2008 and remains in full force and effect today. A true copy of a current printout from the electronic database records of the USPTO for the ‘433 Registration is attached as Exhibit A.

3. In addition to the ‘433 Registration, Opposer is the owner of a common-law trademark consisting of the image of an alligator. This trademark is used by Opposer on the same beer products as its ANDYGATOR trademark. A sample of this trademark as it appears on packaging for Opposer’s beer product is attached as Exhibit B.

4. Opposer’s registered ANDYGATOR trademark and its common-law trademark consisting of the image of an alligator are collectively referred to hereafter as the “Abita Gator Marks.”

5. In addition to the goods identified in the ‘433 Registration, Opposer has developed, marketed, and distributed – and continues to currently market and distribute – various promotional items bearing the Abita Gator Marks, including but not limited to apparel and beverageware. Examples of some of Opposer’s promotional items bearing the Abita Gator Marks are attached as Exhibits C and D.

6. Opposer owns and has continuously used the Abita Gator Marks in connection with the goods described herein since long before the October 7, 2014 filing date of the ‘478 Application.

7. By virtue of the substantially exclusive and continuous delivery of the goods described herein under the Abita Gator Marks, persons familiar with such goods have come to recognize the Abita Gator Marks as an indication of a unique brand of goods. Consequently, Opposer has established valuable good will in the Abita Gator Marks.

8. By virtue of its substantially exclusive and continuous use of the Abita Gator Marks in connection with the goods described herein, Opposer has acquired and is the sole owner of common law, state statutory, and other trademark, service mark, trade name, and related rights to the Abita Gator Marks.

9. Applicant's goods identified in the '478 Application in connection with the Gator Lager Design are identical to the goods recited in the '433 Registration and are sold, distributed or provided, or likely to be sold, distributed or provided, through the same or commercially related channels of trade to the same or overlapping classes of purchasers, consumers or users.

10. Persons familiar with Opposer's goods marketed under the Abita Gator Marks, upon seeing advertisements for Applicant's goods sold, distributed or provided under the Gator Lager Design (which prominently features the term GATOR), would be likely to believe, and would be justified in so believing, that such goods originated from Opposer or were produced in association, connection or affiliation with, or under sponsorship, approval or authorization by, Opposer. Thus, the Gator Lager Design, as used in connection with Applicant's goods, would lead persons familiar with the Abita Gator Marks to believe that Applicant's goods are provided or originated by, sold or distributed in association, connection or affiliation with, or under sponsorship, approval, authorization or license from Opposer.

11. It is likely that, and Opposer believes that, if Applicant is permitted to register the Gator Lager Design for the goods identified in the '478 Application, confusion of the trade and public would, or likely would, result by reason of Applicant's use of a design highly similar to the Abita Gator Marks owned and used by Opposer. Such confusion would result in damage and injury to Opposer. Customers, consumers and/or users familiar with the Abita Gator Marks would be likely to purchase, consume, or otherwise use Applicant's goods, believing them to

originate from, be sponsored by, or be under license from Opposer. Any defect, objection, fault, or adverse publicity in connection with Applicant's goods sold, distributed or provided under the Gator Lager Design would necessarily reflect on and seriously injure the reputation that Opposer has established for the Abita Gator Marks.

12. If Applicant is granted a registration for the Gator Lager Design for the goods identified in the '478 Application, it would obtain thereby at least *prima facie* exclusive right to use the Gator Lager Design in connection with such goods. Such registration would be a source of damage and injury to Opposer and Opposer's customers.

13. Considering that the Gator Lager Design, which prominently features the term GATOR, is highly similar to the Abita Gator Marks owned and used by Opposer, and considering that the goods of the respective parties (to-wit: beer) are identical, Applicant's registration of the Gator Lager Design is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association between the parties or as to the origin, sponsorship, or approval by Opposer of the Applicant's goods.

**WHEREFORE**, Opposer, Abita Brewing Company, LLC, prays that after due proceedings are had, Applicant's application Serial No. 86/416,478 be rejected, that registration of the Gator Lager Design for "beer, ale and lager" be denied and refused, and that this opposition be sustained.

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To the extent any fees are required to file or process these documents, the Commissioner is hereby authorized to charge any and all fees which may be required, or credit any overpayment to, Deposit Account No. 03-0937.

Respectfully submitted,

/Theodore S. Owers III/

**RAYMOND G. AREAUX (Reg. #33,643)**

**THEODORE (TODD) S. OWERS III**

**HARRY M. BARTON**

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*Attorneys for Opposer, Abita Brewing Company, LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant by mailing said copy on May 20, 2015 via first-class mail to the Applicant's attorney of record as listed in the Trademark Status and Document Retrieval (TSDR) system located at <http://tsdr.uspto.gov>:

Bryan J. Rush, Esq.  
Salcedo Attorneys at Law, P.A.  
200 S. Biscayne Blvd., Suite 2700  
Miami, Florida 33131-5331

/Theodore S. Owers III/

Theodore S. Owers III

4846-0018-8708, v. 1

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

Reg. No. 2,213,433

**United States Patent and Trademark Office**

Registered Dec. 22, 1998

**TRADEMARK  
PRINCIPAL REGISTER**

**ANDYGATOR**

ABITA BREWING COMPANY, INC. (LOUISI-  
ANA CORPORATION)  
P.O. BOX 762  
ABITA SPRINGS, LA 70420

FIRST USE 2-10-1995; IN COMMERCE  
8-11-1998.

SN 75-284,804, FILED 5-1-1997.

FOR: BEER, ALE, LAGER, MALT LIQUOR,  
IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

ELIZABETH PASQUINE, EXAMINING ATTOR-  
NEY

EXHIBIT

A





## United States Patent and Trademark Office

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## Trademark Assignment Abstract of Title

## Total Assignments: 2

Serial #: [75284804](#)

Filing Dt: 05/01/1997

Reg #: [2213433](#)

Reg. Dt: 12/22/1998

Registrant: Abita Brewing Company, Inc.

Mark: ANDYGATOR

## Assignment: 1

Reel/Frame: [1858/0215](#)

Recorded: 02/19/1999

Pages: 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [ABITA BREWING COMPANY, INC.](#)

Exec Dt: 02/17/1999

Entity Type: CORPORATION

Citizenship: LOUISIANA

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: LOUISIANA

Assignee: [ABITA BREWING CO., L.L.C.](#)

21084 HWY. 36

COVINGTON, LOUISIANA 70443

Correspondent: CARVER. DARDEN, KORETZKY, TESSIER ET AL

RAYMOND G. AREAUX

1100 POYDRAS STREET

ENTERGY CENTRE, STE. 2700

NEW ORLEANS, LA 70163

## Assignment: 2

Reel/Frame: [5508/0626](#)

Recorded: 05/01/2015

Pages: 8

Conveyance: SECURITY INTEREST

Assignor: [ABITA BREWING CO., L.L.C.](#)

Exec Dt: 04/30/2015

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: LOUISIANA

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: DELAWARE

Assignee: [GOLUB CAPITAL LLC, AS ADMINISTRATIVE AGENT](#)

666 FIFTH AVENUE, 18TH FLOOR

NEW YORK, NEW YORK 10103

Correspondent: JACLYN DI GRANDE - PARALEGAL

GOLDBERG KOHN LTD.

55 E MONROE ST., SUITE 3300

CHICAGO, IL 60603

Search Results as of: 05/15/2015 07:30 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.5

Web interface last modified: July 25, 2014 v.2.5

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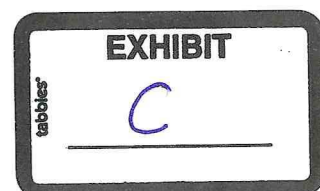


EXHIBIT

B

tabbles







ANDYGATOR



EXHIBIT

D

tabbles